

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 21st Floor
San Francisco, California 94105**

NOTICE OF PROPOSED ACTION
(Credit Insurance Agent Licensing Regulations)

DATE: June 27, 2003

REGULATION FILE: RH02024458

SUBJECT OF PROPOSED RULEMAKING

The Insurance Commissioner proposes to adopt the regulations described below after considering comments from the public. The Commissioner proposes to amend Title 10, Chapter 5, Subchapter 1, Article 9, by adopting §2192.1 through §2192.13 of the California Code of Regulations (10 CCR §§2192.1 – 2192.13). The regulations will establish a new regulatory scheme for licensing and regulating credit insurance agents.

PUBLIC HEARING

No public hearing has been scheduled in connection with this proposed action. A public hearing will be held, however, if no later than fifteen (15) days before the last day of the public comment period the contact person identified below receives from an interested person or his or her duly authorized representative a written request for a public hearing. The sole purpose of such a hearing would be to address the merits of the proposed regulations.

AUTHORITY AND REFERENCE

The proposed regulations will implement, interpret and make specific the provisions of Insurance Code sections 1758.9 through 1758.994 (Assembly Bill 393, 1999; Chapter 321, Statutes of 2000), which became effective January 1, 2002 and will establish a new regulatory scheme for licensing and regulating credit insurance agents. Authority for this rulemaking is found in Section 8 of Assembly Bill 393 (Chapter 321, Statutes 2000) which requires the Insurance Commissioner to “adopt rules to implement this act.”

PRESENTATION OF WRITTEN COMMENTS; CONTACT PERSON

All persons are invited to submit written comments on the proposed regulations during the public comment period. The public comment period will end at 5:00 p.m. on August 11, 2003. Please direct all written comments to the following contact person:

Debra A. Chaum, Legal Division
California Department of Insurance
45 Fremont Street, 21st Floor
San Francisco, CA 94105
Telephone: (415) 538- 4115

DEADLINE FOR WRITTEN COMMENTS

All written materials must be received by the Insurance Commissioner, addressed to the contact person at the address listed above, no later than 5:00 p.m. on August 11, 2003. Any written materials received after that time will not be considered.

COMMENTS TRANSMITTED BY E-MAIL OR FACSIMILE

The Commissioner will accept written comments transmitted by e-mail provided they are sent to the following e-mail address: chaumd@insurance.ca.gov. The Commissioner will also accept written comments transmitted by facsimile provided they are directed to the attention of Debra A. Chaum and sent to the following facsimile number: (415) 904-5490. Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline set forth above for written comments.

INFORMATIVE DIGEST

SUMMARY OF EXISTING LAW AND POLICY STATEMENT OVERVIEW

California Insurance Code Sections 1758.9 through 1758.994 (Assembly Bill 393, 1999; Chapter 321, Statutes of 2000), which became effective January 1, 2002, establish a new regulatory scheme for licensing and regulating credit insurance agents. Under the new scheme, no person shall sell or solicit the sale of any form of credit insurance in this state, and receive a commission for doing so, unless that person is licensed as an insurance agent or broker, or is licensed as a credit insurance

agent under the newly enacted statutory provisions. The new law provides definitions, and establishes license application, training, management, disclosure and other requirements. Section 8 of Assembly Bill 393 requires the Commissioner to adopt regulations to implement the credit insurance agent law. These regulations hereby noticed fulfil that legislative mandate by implementing, interpreting, and making specific the provisions of the law.

EFFECT OF PROPOSED ACTION

The specific provisions of these regulations are as follows:

Authority

Section 2192.1 recites the authority under which the regulations will have been promulgated. This section is reasonably necessary to inform interested parties of the authority under which the regulations will have been promulgated.

Applicability

Section 2192.2 states that the regulations apply to all credit insurance agents, all applicants for a credit insurance agent license, and all persons who transact credit insurance, whether licensed or not. This section is reasonably necessary because some language in the regulations applies to persons acting as credit insurance agents even if not licensed.

Definitions

Section 2192.3 defines some terms that are used, but not defined, in the credit insurance agent statutes. Those terms include “authorized insurer,” “sell,” “solicit,” “endorsee,” “commission,” “compensation,” “fee,” and “material terms and conditions.” The definitions implement, interpret, and make specific terms used throughout the statutes (and throughout the regulations). This section is reasonably necessary to inform interested parties of the meaning of the defined terms and allows for consistent use of defined terms.

Applications; license term

Section 2192.4(a) specifies that a separate license must be applied for and obtained by each natural person (i.e., individual) before that person acts as a credit insurance agent, and that a separate license must be applied for and obtained by each organization before that organization

acts as a credit insurance agent. The statute is unclear in this regard in that it does not specifically state that a separate license must be applied for by each natural person or

organization. This section is therefore reasonably necessary to clarify that a credit insurance agent, whether an individual or an organization, must obtain a license before acting as a credit insurance agent. Without this clarification it might be possible to interpret the licensing statute so that a person could act as a credit insurance agent without a license due to his or her affiliation with a person who is licensed.

Section 2192.4(b) explains that a natural person may sell, solicit, or otherwise transact credit insurance as a licensed credit insurance agent or as an endorsee of an organization that holds a credit insurance agent license, and that a natural person may be named simultaneously as an endorsee of multiple organizations that hold credit insurance agent licenses. This section is reasonably necessary to clarify that a credit insurance agent license may be obtained by natural persons, not merely organizations, and that a natural person may be an endorsee of multiple organizations that hold credit insurance agent licenses.

Section 2192.4(c) states that a credit insurance agent license, whether issued to an individual or an organization, is valid for twelve months, and must be renewed annually by the anniversary of the issue date. This section is reasonably necessary to clarify that a credit insurance agent license is valid for twelve months, and must be renewed annually by the anniversary of the issue date. Without this section, interested persons would not know that a credit insurance agent license is valid for twelve months, and must be renewed annually by the anniversary of the issue date. The Department established a twelve-month term, rather than a longer or shorter period, to coordinate the renewal filing with other filing licensees will need to make on an annual basis. (See Insurance Code section 1758.93).

Section 2192.4(d) requires that an individual credit insurance agent license applicant obtain electronic fingerprint impressions from the Department's vendor for that service, using the Request for Live Scan Service (Form 442-39A). It further requires that the manager of each business location of an organization licensed as a credit insurance agent obtain electronic fingerprint impressions from the Department's vendor for that service, using the Request for Live Scan Service (Form 442-39A).

This section is necessary because the Department uses complex computer hardware and software to collect fingerprints efficiently and inexpensively as possible. The Department employs an exclusive vendor for these computer services and this subsection ensures that applicants for the credit insurance agent license and those seeking renewal of the credit insurance agent license are not exempt from the general requirements and procedures used to obtain fingerprints from all other applicants seeking licenses and licensees seeking renewal of licenses from the Department. The imposition of this requirement allows the Commissioner to perform licensing functions required by statute in a uniform and efficient manner.

Fees

Section 2192.5(a) recites that a \$300 fee must be paid at the time a credit insurance agent license application is filed with the Department, and a \$30 fee must be paid for each endorsee at the time an organization endorsement appointment form is filed with the Department. These fees were determined by the Commissioner in accordance with California Insurance Code Sections 1758.92(3) and 1758.93(3) and the Commissioner has preliminarily determined that the fees are sufficient to defray the actual cost of processing. This section is reasonably necessary to inform interested parties of the filing fees for a credit insurance agent application and an endorsee application. Without this section, interested persons would not know the amount of these fees.

Section 2192.5(b) states that a \$274 fee must be paid at the time a credit insurance agent license renewal application is filed with the Department, and a \$4 fee must be paid at the time an endorsee renewal application is filed with the Department. These fees were determined by the Commissioner in accordance with California Insurance Code Sections 1758.92(3) and 1758.93(3). This section is reasonably necessary to inform interested parties of the filing fees for a credit insurance agent renewal application and an endorsee renewal application. Without this section, interested persons would not know the amount of these fees.

Section 2192.5(c) provides that the Commissioner may refuse to issue a credit insurance agent license if the appropriate fees do not accompany the application. This section is reasonably necessary to avoid costly fee collection problems for the Department. Without this section, some applicants might delay paying their fees, or refuse to pay their fees, even after receiving a license. This in turn would necessitate expensive collection proceedings, which in some cases would not be successful and would thereafter require expensive due process to revoke the license.

Section 2192.5(d) provides that subject to the provisions of California Insurance Code Sections 1758.92(a)(3) and 1758.92(a)(3) the Commissioner may increase or decrease the fees set forth in these regulations to reflect the actual costs associated with processing the application and renewal transactions. This subsection was not in the emergency regulations, but has been added at the request of interested parties who want to ensure that the fees paid reflect actual costs.

Disclosure

Section 2192.6(a) specifies that all disclosures required by Insurance Code Sections 1758.97(a) and (b) must be printed and must be clear and conspicuous. This section is reasonably necessary to assure that disclosures are visible and understandable to consumers.

Section 2192.6(b) states that an insurer must include in the evidence of coverage it provides to a purchaser, pursuant to Insurance Code section 1758.97(c), all provisions the insurer could rely

upon to deny a claim. It further states that an insurer may not rely upon a policy provision to deny a claim unless that provision was included in the evidence of coverage. This section is

reasonably necessary to assure consumers are properly informed of all provisions their insurers could rely upon to deny a claim. Without this section an insurer could indicate that applicable provisions are contained in a master policy in the possession of a master policyholder. Consumers then would have to make a special effort to request a copy of the master policy contract terms applicable to them, when those terms could easily have been provided to them automatically at or shortly after the insurance purchase.

Training

Section 2192.7(a) provides that training materials required by Insurance Code section 1758.93(b) must be prepared and submitted to the Commissioner, and must include training for all insurance products to be sold. This section is reasonably necessary to inform licensees and applicants that training materials must be submitted for all insurance products to be sold, not merely some of those products.

Section 2192.7(b) requires retraining of endorsees whenever there is a change in the insurance product(s) sold, but in no event less frequently than every two (2) years for each endorsee. This section is reasonably necessary to make specific Insurance Code Section 1758.93(c).

Section 2192.7(c) states that if training materials have been developed by an insurer and approved by the Department of Insurance, the licensee may submit, in lieu of the training materials, a letter, signed by the licensee's manager or a corporate officer, stating that the licensee will use the approved training materials filed by the insurer. This section is reasonably necessary to permit credit insurance agents to use, without resubmitting, training materials that are already on file with, and approved by, the Department.

Records

Section 2192.8 requires credit insurance agents to comply with the provisions of Insurance Code Section 1727 and Article 7 of Chapter 5 of Subchapter 1 of Title 10 of the California Code of Regulations, commencing with section 2190. The above referenced statute and regulations specify the records that must be maintained by agents and brokers as well as specifying the location where such records must be maintained. This section is reasonably necessary to assure that credit insurance agents maintain records necessary for the Department to audit their operations so as to ensure their compliance with California law.

Forms

Section 2192.9(a) recites various forms by form number which credit insurance agent applicants and licensees must submit to the Commissioner for various purposes. These include: (1) A written application for licensure must be made on Form 441-9 for individuals and on Form 441-

11 for organizations; (2) The credit insurance agent notice of appointment must be made on Form LIC.CI 20; (3) The employee affidavit of training and knowledge must be made on Form LIC.CI 50; (4) The annual certificate of compliance and listing of authorized endorsees must be made on Form LIC.CI 40; (5) The annual training material submission must be made on Form LIC.CI 10; (6) Fingerprint impressions must be requested, and their having been taken evidenced by completion and submission to the Department of a Request for Live Scan Service using Form 442-39A; (7) Organization endorsements must be made using Form 411-8A.

This section is reasonably necessary to implement the statutory scheme, interpret and inform applicants and licensees of the proper forms to use for various filings required by the statute.

Section 2192.9(b) requires that training materials submitted to the Commissioner contain all of the elements set forth in Form LIC.CI 30. This section is reasonably necessary to inform licensees of the specific training materials that must be submitted.

Section 2192.9(c) provides that all forms set forth in section 2192.9(a) are incorporated by reference in the regulations in their entirety and are available upon request, by telephone or in writing, to the Department of Insurance, and on the Department of Insurance website, www.insurance.ca.gov. This section is reasonably necessary to inform interested parties as to how they can obtain the forms used that need to be submitted to the Department by credit insurance agent applicants and licensees.

Certifications

Section 2192.10 provides that any certification required by Article 16.7 of Chapter 5 of Part 2 of Division 1 of the Insurance Code (commencing with Section 1758.9) must be made under penalty of perjury under the laws of the State of California. This provision is reasonably necessary to assure that certifications are made after proper diligence by applicants and licensees to assure the truth and accuracy of the matters certified.

Limitations on the credit insurance agent's authority to transact

Section 2192.11 provides that a person licensed as a credit insurance agent may not sell credit insurance in connection with a loan in excess of \$60,000, relating to or secured by real property, or where the repayment period for any loan or extension of credit exceeds ten years. This provision is reasonably necessary to clarify confusing language in Insurance Code Section 1758.96 and clearly set forth the Legislature's intended limitations on the credit insurance agent's authority to transact.

Endorsee termination and renewal

Section 2192.12 states that the Department must provide organizations that hold a credit insurance agent license a list of its endorsees at least 90 days prior to the annual renewal of the organization's license. The organization must terminate endorsees no longer employed by the organization by striking through those endorsees' names, having an officer sign and date the list, and return the list to the Department along with the renewal fees for the non-stricken, active endorsees. The organization must return the endorsee list with an Annual Certificate of Training and List of Endorsee Form LIC.CI 40 to certify that the endorsees have received required training. The submission of the list to the Department will satisfy the credit insurance agent's duty to submit an annual listing of endorsees pursuant to Insurance Code Section 1758.93(b).

This provision is reasonably necessary to inform the organization licensees of the procedure to follow to delete endorsees, to pay the annual fee for maintaining active endorsees, and to certify that endorsees have received training or retraining, all as required by Insurance Code sections 1758.93(a)(3) and 1758.93(b).

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The proposed regulations do not impose any mandate on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

COST OR SAVINGS TO STATE/LOCAL AGENCY OR SCHOOL DISTRICT OR IN FEDERAL FUNDING

The Commissioner has determined that the proposed regulations will result in no cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, no other nondiscretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State.

ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE

The Insurance Commissioner has made an initial determination that the proposed regulations have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The types of

businesses addressed by these regulations are insurers and creditors that engage in ‘point of sale’ credit insurance transactions.

POTENTIAL COST IMPACT ON PRIVATE PERSONS OR ENTITIES/BUSINESSES

The Commissioner is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

FINDING OF NECESSITY

The Commissioner finds that it is necessary for the health, safety, or welfare of the people of the state that the regulations apply to businesses.

EFFECT ON JOBS AND BUSINESSES IN CALIFORNIA

The Commissioner is required to assess any impact the regulations may have on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of new businesses, and the expansion of businesses currently operating in the state. The Commissioner does not foresee that the proposed regulations will have an impact on any of the above but invites interested parties to comment on this issue.

IMPACT ON HOUSING COSTS

The matters proposed herein will have no significant effect on housing costs.

ALTERNATIVES

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that has otherwise been identified and brought to the attention of the Commissioner would be more effective in carrying out the purposes for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed regulations. The Commissioner invites public comment on alternatives to the regulations.

ECONOMIC IMPACT ON SMALL BUSINESS

The Commissioner has determined that the proposed regulations may have a minor effect on small business creditors that engage in “point of sale” credit insurance transactions. A small business seeking to obtain a credit insurance agent license will pay a \$300 fee for the

organization and a \$30 fee for each employee it seeks to license as an endorsee. The Commissioner estimates that most organizations will have fewer than five endorsees. Labor

costs in completing the application forms should not exceed \$100. Annual license renewal fees are \$274 for the organization and \$4 for each endorsee.

COMPARABLE FEDERAL LAW

There are no existing federal regulations or statutes comparable to the proposed regulations.

TEXT OF REGULATIONS AND INITIAL STATEMENT OF REASONS

The Commissioner has prepared an initial statement of reasons that sets forth the reasons for the proposed regulations. Upon request, the initial statement of reasons will be made available for inspection and copying. Requests for the initial statement of reasons or questions regarding this proceeding should be directed to the contact person listed above. Upon request, the final statement of reasons will be made available for inspection and copying once it has been prepared. Requests for the final statement of reasons and/or rulemaking file should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the proposed regulations, the statement of reasons, the information upon which the proposed action is based, and any supplemental information, including any reports, documentation and other materials related to the proposed action that is contained in the rulemaking file, is available for inspection and copying at 45 Fremont Street, 21st Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday.

AUTOMATIC MAILING

A copy of this notice, including the informative digest, which contains the general substance of the proposed regulations, will automatically be sent to all persons on the Insurance Commissioner's mailing list.

WEBSITE POSTINGS

Documents concerning this proceeding are available on the Department's website. To access them, go to <http://www.insurance.ca.gov>. Go to the left margin and scroll down to the link entitled 'Legal Information.' Click on the 'Legal Information' link and once the 'Legal Information' screen appears then click on the 'Proposed Regulations' link near the top of the page. When the 'Search or Browse for Documents for Proposed Regulations' screen appears, you

may choose to find the documents either by conducting a search or by browsing for them by name.

To search, enter "RH02024458" (the Department's regulation file number for these regulations) in the search field. Alternatively, search using as your search term the California Insurance Code section number of a code section that the regulations implement (for instance, "1758.9"), or search by keyword ("credit" for example). Then, click on the "Submit" button to display links to the various filing documents.

To browse, click on the "Browse All Regulations" button near the bottom of the screen. A list of the names of regulations for which documents are posted will appear. Find in the list the 'Credit Insurance Agent Licensing' link, and click it. Links to the documents associated with these regulations will then be displayed.

MODIFIED LANGUAGE

If the regulations ultimately proposed by the Department differ from those which have originally been made available but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Interested persons should request a copy of these regulations prior to adoption from the contact person listed above.

Dated:

JOHN GARAMENDI
Insurance Commissioner

By
JERRY L. WHITFIELD
Assistant General Counsel